

assume — as was argued in the earlier cases, notably, I think, *Taylor v. Stibbert* 2 Ves. J. 437 — that the tenant is in possession from year to year. He must look at the agreement and he is bound by the agreement, and if, as in *Daniels v. Davison* 16 Ves. J. 249, the tenant not only has a tenancy agreement but an option to purchase, he is also bound by that.

But, in my judgment, a purchaser is not only entitled but bound to assume, when he is looking at the agreement under which the tenant holds, that that agreement correctly states the relationship between the tenant and the landlord; and he is not bound to assume or to ask or make inquiry whether the tenant has any rights to rectify that contract."

And he later concluded, at pp. 1092 to 1093:

"In my judgment the defendant is entitled and bound to rely on the terms of the document, and the document speaks for itself. Accordingly, had I come to a contrary conclusion upon the claim for rectification, I should have found that this action was barred by the plea of *bona fide* purchaser of value without notice. In the circumstances, I must dismiss the action."

The instant case is clearly distinguishable from that case. First, in this case, if one examines the terms and conditions of the lease, as any conveying lawyer would have to do in acting for a purchaser of the freehold reversion, he would have noticed the error or defect in clause 2(a) with regard to the three dates of payment of the five-year rent in advance. Limiting my attention to the four corners of the document alone and as a matter purely of construction, I would be inclined to hold that on the true construction of that clause, the first date of payment of the five-year rent in advance must be May 1, 1978 and following from that, the second and the last dates of similar payments must be May 1, 1983 and May 1, 1988 respectively. Secondly, at the time when the defendants accepted the transfer of the property from Ong Kang Chew on October 3, 1979 the question of apportionment of rent would have arisen and in this connection the defendants would have been apprised of the fact that the five-year rent in advance for the five years from May 1, 1978 to April 30, 1983 only had been paid. It must therefore be taken that the defendants in accepting the transfer of the property had accepted that the two subsequent payments of five-year rent in advance would be paid respectively on May 1, 1983 for the period from May 1, 1983 to April 30, 1988 and May 1, 1988 for the period from May 1, 1988 to April 30, 1993. It was said by counsel for the defendants that the question of apportionment of rent did not take place as the transfer was one made to the defendants as a "family company". Even if that was the position — on which there was no evidence

A in support — the "family company" would still have been aware at that time of the rent that had been paid and the rent that would be payable. I find it inconceivable that in taking over this property the defendants did not enquire with and find out from Ong Kang Chew the exact dates of payment of the five-year rent in advance for the residue of the term. On any view of the matter, the defendants cannot be considered as a purchaser without notice. This argument on behalf of the defendants therefore failed. I cannot find any reason why an order for rectification as sought should not be made, which I therefore made.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; J.S. Yeh & Co.*

ANG TECK HWA v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) September 30, 1987]

[Singapore — Magistrate Appeal No. 288 of 1986]

Criminal Law — Penal Code (Cap. 224, 1985 Ed.), s. 409 — Criminal breach of trust by agent — Charge of — Whether dishonesty had been proved beyond a reasonable doubt.

Hire Purchase — Agreement between car dealer and finance company — Car dealer failed to remit two payments to finance company and used money for his own expenses — Whether criminal breach of trust — Whether there was dishonest intention beyond a reasonable doubt — Penal Code (Cap. 224, 1985 Ed.), s. 409.

The appellant in this case was a car dealer. He applied to Sim Lim Finance Ltd. (SLF) to be the latter's agent in respect of motor hire-purchase. His application was successful and on December 26, 1980, he signed a dealer's master recourse agreement ("the master agreement") with SLF.

The transaction leading to the present charge involved the sale of a second-hand car by the appellant to one Seow. The purchase price of the car was \$12,800. Seow paid the appellant \$3,300. The balance \$9,500 was financed by SLF.

In accordance with the master agreement, SLF purchased the car from the appellant and entered into a hire-purchase agreement with Seow. Under the hire-purchase agreement dated October 23, 1982, Seow was to repay the loan in 35 instalments of \$375 each on the 23rd of each month plus 1 final instalment of \$365. At the end of June 1984, Seow had paid 20 instalments and settled the outstanding balance, amounting to \$5,444.80 on July 3, 1984. All instalments as well as the final payments were, as requir-

ed by SLF in their Third Schedule Notice to Seow, paid to the appellant as SLF's dealer.

The appellant failed to remit the 20th instalment of \$375 and the final payment of \$5,444.80 to SLF. Instead, the appellant used these two sums of money to pay his other expenses. SLF was not informed that Seow had fully settled his account. On June 29, 1984, the appellant applied to SLF for the release of the log book for the vehicle.

The reason given was "ROV Vehicle Inspection". The log book was released to the appellant and SLF never got it back.

On these facts, the appellant was charged with criminal breach of trust as an agent, an offence under section 409 of the Penal Code. The learned District Judge rejected the appellant's defence and found that SLF lent the \$9,500 to Seow and not to the appellant. The learned District Judge further found that the money paid by Seow under the hire-purchase agreement to the appellant had been received by the appellant on behalf of SLF and until the money was forwarded to SLF by the appellant, the appellant held it in trust for SLF. Thus, the District Judge concluded, the appellant had no right to use the money for his own purpose. The appellant was convicted on the charge of criminal breach of trust as an agent and sentenced to six months' imprisonment. He appealed against both conviction and sentence.

Held, allowing the appeal: (1) in this case the charge being under section 409, the prosecution would have to prove, firstly, that the appellant had committed breach of trust in that he had been entrusted with dominion over the property as charged, and that he had dishonestly misappropriated the money within the meaning of section 405, and, secondly, that dominion over the money had been entrusted to the appellant in his capacity as agent for SLF;

(2) there was no loan from SLF to the appellant. The appellant was receiving the payments for and on behalf of SLF, holding such payments on trust for SLF until the due dates when the appellant had to remit the payments to SLF;

(3) on the evidence on record, no finding could be made that the appellant had, beyond reasonable doubt, the necessary dishonest intention;

(4) whilst the false reason used by the appellant in the application to SLF for the release of the log book may show an intention to conceal the payments made by Seow, the accounts maintained by the appellant on behalf of SLF pursuant to the master agreement indicated otherwise. In such circumstances, the appellant must be given the benefit of the doubt;

(5) dishonesty not having been proved beyond a reasonable doubt, the conviction must be set aside and an acquittal be recorded instead.

Cases referred to:

- (1) *Nga Po Ywet v. Emperor* (1914) 15 Cr. L.J. 452; A.I.R. 1914 L.B.1.
- (2) *Chang Lee Swee v. Public Prosecutor* [1985] 1 M.L.J. 75.
- (3) *Mercantile Credit Co. Ltd. v. Hamblin* [1964] 3 All E.R. 592, 600-601.

- (4) *Branwhite v. Worcester Works Finance Ltd.* [1969] 1 A.C. 552.

MAGISTRATE APPEAL.

Lee Tow Kiat for the appellant.

Lawrence Ang (Deputy Public Prosecutor)

B for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellant was tried in a District Court on the following charge:

C "You,

ANG TECK HWA, m/39 years
NRIC NO: 0992563-E

are charged that you, on the 3rd day of July, 1984 at M/s Nam Choon Hang Motor Vehicles Trading Company, No: 89 Short Street, Golden Wall Auto Centre, # 05-01/02, being an agent, to wit, an authorised hire-purchase dealer of M/s Sim Lim Finance Limited, and in such capacity, having dominion over certain property, to wit, money belonging to M/s Sim Lim Finance Limited, committed criminal breach of trust \$5,819.80 in respect of the said property and you have thereby committed an offence punishable under section 409 of the Penal Code, Chapter 103."

He was convicted on the charge and sentenced to six months' imprisonment. This appeal is against both conviction and sentence.

F The undisputed facts are as follows.

On October 14, 1980, the appellant, a car dealer and sole-proprietor of M/s Nam Choon Hang Motor Vehicles Trading Company, applied to M/s Sim Lim Finance Ltd ("SLF") to be the latter's agent in respect of motor hire-purchase. His application was successful and on December 26, 1980, the appellant signed a dealer's master re-course agreement ("the master agreement") with SLF.

H Pursuant to the master agreement, if the appellant had a buyer who needed financing and SLF were willing to finance the buyer, the arrangement between the appellant and SLF was this:

- (a) SLF would purchase the car from the appellant;
- (b) SLF would then enter into a hire-purchase agreement with the buyer;
- (c) SLF would next pay so much of the purchase price that was financed by them to the appel-

lant. This payment of course, in actual fact, represents payment by the buyer for the purchase of the car;

- (d) the instalment payments under the hire-purchase agreement would be made to the appellant who was to remit the same to SLF on the due dates specified by SLF. In this particular case, SLF in a letter dated December 26, 1980 (to which the appellant had agreed) had specified the due dates as the 15th and 30th of every month (or end of the month in the case of February);
- (e) where the buyer failed to make any instalment payment, the appellant was himself to make payment to SLF on the due dates on behalf of the buyer;
- (f) the appellant was also required to indemnify SLF against all losses which SLF might suffer as a result of entering into a hire-purchase agreement;
- (g) the agreed rate of interest between SLF and the appellant pursuant to the master agreement was 8¼% for new vehicles and 8¾% for second-hand vehicles. However, the interest rate payable by the buyer pursuant to the hire-purchase agreement would be a higher rate and by clause 6 of the master agreement, the excess interest would be paid to the appellant at the end of the hire-purchase period after deducting any unpaid instalment.

The transaction leading to the present charge involved the sale of a second-hand car by the appellant to one Seow Khee Leng ("Seow"). The purchase price of the car was \$12,800. Seow paid the appellant \$3,300. The balance \$9,500 was financed by SLF.

In accordance with the master agreement, SLF purchased the car from the appellant and entered into a hire-purchase agreement with Seow. Under the hire-purchase agreement dated October 23, 1982, Seow was to repay the loan in 35 instalments of \$375 each on the 23rd of each month plus 1 final instalment of \$365.

At the end of June 1984, Seow had paid 20 instalments and settled the outstanding balance, amounting to \$5,444.80 on July 3, 1984. All instalments as well as the final payments were, as required by SLF in their Third Schedule Notice to Seow, paid to the appellant as SLF's dealer.

A The appellant failed to remit the 20th instalment of \$375 and the final payment of \$5,444.80 to SLF. Instead, the appellant used these two sums of money to pay his other expenses. SLF were not informed that Seow had fully settled his account. On June 29, 1984, the appellant applied to SLF for the release of the log book for the vehicle. The reason given was "ROV Vehicle Inspection." The log book was released to the appellant and SLF never got it back.

B On these facts the appellant was charged for criminal breach of trust as an agent, an offence under section 409 of the Penal Code.

C Section 409 reads as follows:

D "Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine."

E The appellant's main arguments were three-fold. First, the appellant argued that in receiving the payments from Seow, he was not SLF's agent. Secondly, the appellant argued that there was no entrustment. The appellant's third argument was that there was no dishonest intention. Central to all three arguments, however, was the appellant's contention that despite the documents that he had executed, the relationship between the appellant and SLF was, in reality, that of borrower and lender. In other words, the appellant alleged that SLF was merely lending him money and therefore the instalments paid to him became his own money; accordingly there was no question of entrustment or criminal breach of trust as an agent.

H The District Judge rejected the appellant's defence and found that it was not the case that SLF lent money to the appellant for the appellant, in turn, to lend it to the purchaser; rather, it was that SLF lent the \$9,500 to Seow and not to the appellant. The District Judge further found that the money paid by Seow under the hire-purchase agreement to the appellant had been received by the appellant on behalf of SLF and until the money was forwarded to SLF by the appellant, the appellant held it in trust for SLF. Thus, the District Judge concluded, the appellant had no right to use the money for his own purposes.

I Substantially the same arguments were raised during this appeal. Before dealing with the specific

issues raised, it must be noted that section 409 is but an aggravated form of the offence of criminal breach of trust as defined in section 405 of the Penal Code. In the instant case, the charge being under section 409, the prosecution would have to prove, *firstly*, that the appellant had committed breach of trust in that he had been entrusted with dominion over the property as charged, and that he had dishonestly misappropriated or converted or used or disposed of the money within the meaning of section 405, and, *secondly*, that in addition, dominion over the money had been entrusted to the appellant in his capacity as agent for SLF.

Entrustment

Counsel for the appellant submitted that there was no entrustment in the present case as the arrangement between SLF and the appellant was one whereby SLF in entering into the hire-purchase agreement with Seow was, in reality, lending the money to the appellant. As such the payments to the appellant were repayments not to SLF but to the appellant himself. Accordingly, such payments belonged to the appellant and there could therefore be no question of entrustment.

Counsel for the appellant relied on *Nga Po Ywet v. Emperor*,⁽¹⁾ a decision of the Lower Burma Chief Court on a criminal reference.

In that case, the petitioner had entered into a contract with a company to act as the company's broker. The relevant portions of the contract read as follows:

"Whereas the broker ... has requested the company to entrust him with advances of money ... and ... acknowledges that he will receive all such advances ... and hold the same in trust for the company ... it is ... agreed that —

- (1) the broker is not the agent of the company;
- (2) the broker shall employ the money of the company in and about the purchase and transport of paddy to the company's mill ...;
- (3) the property in the money and paddy purchased ... shall remain in the company;
- (4) the broker shall ... upon arrival of the paddy ... tender the same to the company;
- (5) the company shall take delivery of the paddy and ... either pay or credit the broker with price of the same at the current market rate. The broker agrees to accept payment ... at the said current rate whether ... higher or lower than the rate at which he purchased the paddy;

A (6) ...

- (7) The broker shall be responsible for the payment of the money at the supply of paddy to the value thereof if either moneys or the paddy shall be lost by any means ... the broker shall indemnify the company against all loss."

B

Pursuant to the contract, the company advanced Rs4,500 to the petitioner for the purpose of purchasing paddy for them. The petitioner used the money to pay his other personal losses and was convicted for criminal breach of trust in respect of the Rs4,500.

C

The question was whether the Rs4,500 advanced to the petitioner were entrusted to him within the meaning of section 405, Indian Penal Code. The court answered the reference in the negative, holding that the agreement merely showed that the company employed the services of the petitioner and gave him an advance and that ownership in the money was transferred to the broker and no entrustment was created; the agreement evidenced a loan accompanied by a promise to use it in a particular way.

E

The learned District Judge had rejected the above case on the ground that it had no relevance whatsoever as its facts were wholly different. The learned District Judge was also of the opinion that the fact that the appellant was to be liable to SLF under clause 10 of the master agreement even when no payments were received from the hirer does not detract from the fact that when payment was received from the hirer it was received for and on behalf of SLF. I agree with both conclusions.

G

The facts in *Nga Po Ywet* clearly showed that the company was in reality lending money to the broker. The company simply advanced money to the broker who was to buy paddy with it at his own risk, to be resold to the company at the prevailing market rate. If the market rate went up the broker made a profit; if it went down, the broker suffered a loss. The broker was, really, a broker in his own right. The company advanced money to him in return for the right to buy the paddy from the broker as and when such paddy arrived in Rangoon. The court arrived at the conclusion that the company merely loaned the money to the broker, on their interpretation of the true effect of the contract.

I

In the present case, the facts and contractual provisions are very different. There is no money

advanced to the appellant. The hire-purchase agreement is entered into between the buyer and SLF. Any action for recovery of the money would have to be instituted by SLF, not the appellant. The buyer's liability under the hire-purchase agreement remains at all times a liability to SLF. *Nga Po Ywet* is therefore inapplicable to the present case.

Counsel for the appellant also made much of the fact that the appellant was under the master agreement liable to indemnify SLF against any loss suffered by SLF as a result of their entering into any hire-purchase agreement introduced by the appellant. In my view, this does not support the appellant's contention that his relationship with SLF was that of borrower and lender.

There is nothing unusual with the type of arrangement between the appellant and SLF. The concept of there being recourse by the finance company against the dealer is not new. The object of the recourse agreement is to provide the finance company with an indemnity or guarantee by the dealer who introduces the hirer to the finance company. It is understandable that in such circumstances where the finance company in lending money to the buyer is also assisting the dealer in his business, the finance company would want to throw the risks of the transaction on to the dealer. This is even more so where the finance company has to rely on the dealer in so far as particulars with respect to the application for financing are concerned. Furthermore, the arrangement is not without monetary gain to the appellant. By clause 6 of the master agreement, the excess in interest paid by the buyer over the agreed rate between the appellant and SLF (clause 1) is to be paid to the appellant at the end of the hire-purchase period. In this case, the agreed rate between the appellant and SLF in respect of second-hand cars was 8¼% per annum. However, under the hire-purchase agreement entered into between Seow and SLF, Seow was paying interest at 14% per annum. Upon the completion of the hire-purchase period, the difference of 5¼% would be payable to the appellant.

There is another reason why the effect of the dealer's agreement cannot be that of a loan by SLF to the appellant. One would expect that in the case of a loan, the appellant would be the one to decide to whom and how much financing should be given. However, in the present case, the appellant has to request SLF to first purchase the vehicle and the appellant has to submit the buyer's

A application for financing to SLF for SLF's approval.

In my judgment, therefore, it is unrealistic to say that in actual fact, the appellant was the lender *vis-a-vis* the buyer and I reject this argument.

B In my view, the real issue insofar as the question of entrustment is concerned is whether pursuant to the master agreement the appellant, on receipt of the payments made by Seow, was contractually bound to remit the same to SLF. If the appellant was entitled to keep such payments and use them for his own purposes then plainly there could be no question of entrustment.

In this respect, the relevant clause in the master agreement, clause 8, reads as follows:

D "The Dealer undertakes at his own expense to maintain proper accounts on behalf of the company in the names of the hirers showing the amounts paid by and due from the hirers and to permit full inspection and audit of such accounts by the company when required and further undertakes to collect and pay on behalf of hirers and remit to the company punctually on due dates to be specified by the company all sums payable under each and every hire-purchase agreement introduced by the Dealer."

F It must be remembered that there are two sets of due dates. The first set would be the due dates referred to in clause 8 above *i.e.* the due dates as between the appellant and SLF. As stated earlier these were specified as the 15th and 30th of each month (or end of the month in the case of February). The second set of due dates are the dates specified in the hire-purchase agreements; these are the dates by which the hirers have to pay their respective monthly instalments.

G The arrangement between the appellant and SLF is clearly that the appellant collects payments from hirers on their respective due dates as stated in their respective hire-purchase agreements. However, the appellant does not have to remit these monies to SLF immediately; he does not have to settle with SLF until his due dates *vis-a-vis* SLF. No doubt this is to facilitate easy accounting and reduce administrative work.

I However, in my judgment, this does not mean that any monies collected by the appellant can be used by him as he wishes. In my view, where payments are made by hirers, clause 8 does not permit the appellant to make use of these payments for his own purposes before the due dates on which he has to settle with SLF, leaving SLF to claim against

the appellant on a debt owed to SLF. That could not have been the intent of clause 8. It does not make commercial sense for SLF to allow the appellant to use payments that have been made, for his own purposes; SLF would have no security as against the appellant. It seems to me that on the true interpretation of clause 8, where payments are made by hirers, the appellant is bound to collect these payments and to hold them on trust for SLF, to be remitted to SLF on the due dates specified and cannot use these monies as his own.

The irresistible conclusion from all the above is that there was no loan from SLF to the appellant. The appellant was receiving the payments for and on behalf of SLF, holding such payments on trust for SLF until the due dates when the appellant had to remit the payments to SLF. Accordingly, the money was SLF's and not the appellant's; in short, the appellant was entrusted with the money.

Dishonest intention

The appellant was charged with criminal breach of trust of money entrusted to him in his capacity as an agent. Section 405 of the Penal Code defines what criminal breach of trust is, and reads as follows:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, commits 'criminal breach of trust'."

Clearly, in applying the \$5,819.80 paid by Seow to his own use instead of holding them to be remitted to SLF on the due dates as he was supposed to under the master agreement, the appellant had misappropriated or converted to his own use that money. As already discussed, there is also no doubt that this was in violation of the master agreement. No evidence was adduced to show that SLF had, notwithstanding the legal effect of the master agreement, permitted the appellant to make use of instalment payments received by him for his own purposes.

Counsel for the appellant, however, argued that even if the master agreement did not, in actual fact, result in a lender-borrower relationship between SLF and the appellant, the appellant nevertheless *believed* that SLF was lending him

A the money. As such, counsel submitted, there was no dishonest intention on the appellant's part; the appellant believed that he could legitimately make use of the money as his own and that he himself need pay SLF only on the due dates specified by SLF.

B It should be noted that pursuant to section 24 of the Penal Code, "whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person is said to do that thing dishonestly." Under the master agreement, the appellant was not entitled to use the money for his own purposes; therefore his doing so would be a wrongful gain to himself and a wrongful loss to SLF. However, to show dishonesty it must be shown that the appellant *intended* to cause such wrongful gain/loss. To intend a wrongful gain/loss requires that one knows the gain/loss is wrongful. Thus, if the appellant made use of the \$5,819.80 for his own purposes knowing that he was not entitled to do so, then he would be doing so with the intention of causing wrongful gain to himself and wrongful loss to SLF. Conversely, if the appellant can show that he did so honestly believing that he was legally entitled to do, then he could not be said to have acted dishonestly.

Counsel for the appellant referred to *Chang Lee Swee v. Public Prosecutor*⁽²⁾ and pointed out that the appellant had made no attempt to conceal the fact that Seow had made an early settlement of his account. This early settlement was recorded by the appellant in his office ledger.

In *Chang Lee Swee v. Public Prosecutor*⁽²⁾ the prosecution alleged that the appellant being an agent, namely, the Executive Director of TDMB, and in such capacity entrusted with funds of the company committed breach of trust by transferring the funds to another company (KJDB) without approval of the Board of Directors. The appellant was convicted. He appealed and succeeded on his appeal. Gunn Chit Tuan J. had this to say (at pp. 82 – 83):

"In this case I think a simple question could have been asked and that was whether one would have any dishonest intention of committing criminal breach of trust if the so-called withdrawals or transfers of funds were properly accounted for and recorded in the books of accounts of the companies concerned? If the learned president has asked herself that question and considered all the evidence, adduced both oral and documentary, in this case, she would have come to the conclusion that there was no dishonest intention on the part of the appellant to cause either wrongful loss to TDMB or wrongful gain to KJDB and should not have called for the defence."

Counsel also referred to the evidence of the manager of SLF (PW2) where he had said that it was the personal affair of the appellant if the appellant wished to use the money received before the due dates, except that "penalty interest" would be charged if the appellant was late in repayment of the loans. This, counsel submitted, supported the appellant's defence that he honestly believed he could use the money received for his own purposes.

The learned trial judge held that the appellant had caused a wrongful gain to himself when he used the money meant for SLF for his own purposes. The learned trial judge was further of the view that the fact that in the application for the release of the log book SLF was not told the truth as to why the release was being sought, showed that it was the intention of the appellant to conceal from SLF the receipt of the money paid by Seow. The evidence showed that in this respect the appellant had applied to SLF for the release of the log book for Seow's car using the false reason "ROV Inspection" instead of "intention to settle". The explanation given by the appellant's employee (DW3) that the reason "ROV Inspection" had been used on instructions of SLF's manager and executive officer was rejected by the learned trial judge.

However, having gone through the learned trial judge's grounds of decision, it appears to me that in coming to his conclusion that the appellant intended to conceal the payments by Seow from SLF, the learned trial judge had failed to give due consideration to the fact that the appellant had not attempted to conceal these payments in his accounts. These accounts were maintained as required by clause 8 of the master agreement and these very same accounts were subject to inspection by SLF at any time. It is also crucial to note that there is no indication on the record of any other evidence to show that the appellant *knew* he was not entitled to use the money paid by Seow for his own purposes.

In my view, on the evidence on record, no finding that the appellant had, beyond reasonable doubt, the necessary dishonest intention could be made. Whilst the false reason used by the appellant in the application to SLF for the release of the log book may show an intention to conceal the payments made by Seow, the accounts maintained by the appellant on behalf of SLF pursuant to the master agreement indicates otherwise. In such circumstances, the appellant must be given the benefit of the doubt.

A In the premises, dishonesty not having been proved beyond a reasonable doubt, I would set aside the conviction and record an acquittal instead.

B Agency

My decision that dishonesty had not been proved is sufficient to dispose of this appeal. However, the agency aspect had been argued at length and I would deal with it as well.

C Section 409 of the Penal Code refers to criminal breach of trust by, *inter alia*, an agent. In the present case, the appellant was alleged to have been entrusted with dominion over SLF's property (i.e. the instalment payments) in his capacity as SLF's agent. On behalf of the appellant, it was contended that he was not in the position of an agent *vis-a-vis* SLF.

Counsel for the appellant relied on a passage from *Mercantile Credit Co Ltd. v. Hamblin*⁽³⁾ where Pearson L.J. said at pp. 600-601:

E "There is no rule of law that in a hire-purchase transaction the dealer never, or always is, acting as agent for the finance company or as agent for the customer. In a typical hire-purchase transaction the dealer is a party in his own right, selling his car to the finance company, and he is acting primarily on his own behalf and not as general agent for either of the other two parties. There is no need to attribute to him an agency in order to account for his participation in the transaction. Nevertheless the dealer is to some extent an intermediary between the customer and the finance company, and he may well have in a particular case some *ad hoc* agencies to do particular things on behalf of one or the other or it may be both of these two parties."

G The above passage was applied by the House of Lords in *Branwhite v. Worcester Works Finance Ltd.*⁽⁴⁾

H In my view, these two cases do not assist the appellant. The passage cited indeed recognises that while there is no rule that there would be a general agency between the dealer and the finance company, the dealer "may well have in a particular case some *ad hoc* agencies to do particular things on behalf of one or the other or it may be both ...". And in *Branwhite*, Lord Morris made it clear that:

I "... Issues as to agency are mainly to be determined as questions of fact. Furthermore, they often need to be determined by reference to some particular moment of time or by reference to different moments of time. A dealer may in some circumstances be held out by a finance company as their agent. A dealer may in express terms be made an agent. A dealer may for some *ad hoc* purpose be the agent of a finance company." (at p. 573)

What has to be considered in the present case is whether in receiving the payments from Seow the appellant was doing so as SLF's agent. This was *not* what the court in either *Hamblin's* case or *Branwhite's* case had to consider.

Hamblin concerned, *inter alia*, the authority of the dealer in selling the defendant's car to the finance company and in completing hire-purchase documents signed by the defendant in blank. *Branwhite* dealt with, *inter alia*, whether the dealers were agents for the finance company in receiving and holding the initial deposit from the purchaser.

Therefore *Hamblin* and *Branwhite* are to be applied to the instant case only in so far as the general approach to be taken is concerned. In this respect, I would also note that Lord Upjohn in *Branwhite* had this to say (at p. 575-G):

"... so to establish agency the hirer must establish a particular agency to receive [the deposit] on behalf of the finance company or (2) a general agency which at all events included an agency to receive this sum on behalf of the finance company."

As stated earlier, I need not consider the existence of any general agency; I need only consider if there was an agency to receive the payments made by Seow. I have no doubt at all that in receiving these payments the appellant did so as SLF's agent.

In the SLF's Third Schedule Notice to Seow, Seow was directed to pay instalments due "promptly to our dealer Nam Choon Hang Motor Vehicles Trading Company". This, in my judgment, clearly establishes a particular agency whereby the appellant is to receive the payments on behalf of SLF.

Further, it is plain that payment by Seow to the appellant discharged his liability to SLF under the hire-purchase agreement. This could only be so if the appellant was an authorised agent of SLF to receive the payments.

However, for the reasons already given, this appeal is allowed and the appellant's conviction and sentence are set aside.

Appeal allowed.

Solicitors: *Lee Chan & Partners.*

A BRUNEI REPORT

RE WONG MANN TUNG

[O.Cr. J. (Roberts C.J.) August 12 & 15, 1987]

[Bandar Seri Begawan – Criminal Motion No. 9 of 1987]

B *Criminal Procedure – Habeas corpus – Application for – Various grounds raised – Merits of application – Criminal Procedure Code, s. 341.*

The applicant was taken into custody by the police about the end of April 1985 and was detained in Panaga Police Station until March 1986.

C About March 25, 1986, he was transferred to Jerudong prison from which, shortly afterwards, he was transferred to the detention centre at Jerudong on the authority of an order of detention ("the order") issued by the Minister of Law under section 2(1)(a) of the Criminal Law (Preventive Detention) Act (Cap. 150) ("the Act").

D The detention period was later extended for a further period of one year by His Majesty pursuant to section 9 of the Act.

In the present case, the applicant sought an order, which was in the nature of a *habeas corpus*, under section 341 of the Criminal Procedure Code, directing the officer-in-charge of the Detention Centre, Jerudong to set the applicant at liberty on the ground that the applicant was illegally detained in public custody within Brunei Darussalam.

E The applicant raised a number of contentions. He argued that the court has a duty to enquire as to the grounds on which the Minister was satisfied in declaring the order. The applicant also contended that certain procedures were not followed. He also argued that the manner of his detention was illegal because it infringed the principles of natural justice.

F **Held:** (1) a court may not seek to go behind the Minister's subjective conclusion that he was satisfied of the matters which were a pre-condition to the making of a detention order;

G (2) it is not the function of a court to import into such an Act obligations and proceedings which the legislative authority has not seen fit to include in it;

(3) the application must fail.

Cases referred to:

- H (1) *Liversidge v. Anderson* [1941] 3 All E.R. 338.
(2) *Greene v. Secretary of State for Home Affairs* [1941] 3 All E.R. 388.
(3) *Yeap Hock Seng v. Minister for Home Affairs, Malaysia & Ors.* [1975] 2 M.L.J. 279.
(4) *Athappen a/l Arumugam v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1984] 1 M.L.J. 67.

I CRIMINAL MOTION.

Raymond Szetu for the applicant.

Magdalene Chong (Mrs.) for Public Prosecutor.

Cur. Adv. Vult.